

Supreme Court, U. S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. **78-1013**

PEGGY J. CONNOR, HENRY J. KIRKSEY, ET AL.,
Petitioners,
v.

HONORABLE J. P. COLEMAN, United States Circuit Judge,
HONORABLE DAN M. RUSSELL, JR., United States Dis-
trict Judge, HONORABLE HAROLD COX, United States
District Judge, and the UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
Respondents.

**MOTION FOR LEAVE TO FILE PETITION FOR
WRIT OF MANDAMUS, PETITION FOR WRIT OF
MANDAMUS, AND BRIEF IN SUPPORT THEREOF**

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December, 1978

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TABLE OF CONTENTS

	Page
OPINIONS AND ORDERS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	3
STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
A. Prior Proceedings	4
B. Proceedings on Remand	7
REASONS FOR GRANTING THE WRIT	12
I. The Refusal of the District Court to Render a Final Judgment on a Permanent Plan Amounts to a Nullification of and a Failure to Enforce this Court's Mandates in Connor v. Finch and Connor v. Coleman	12
II. This Court Has Jurisdiction to Grant the Relief Requested	16
CONCLUSION	17
PRAYER FOR RELIEF	18
APPENDICES:	
APPENDIX A, Docket Entries of District Court Pro- ceedings Since May 31, 1977	1a
APPENDIX B, Temporary Restraining Order of De- cember 12, 1977	21a
APPENDIX C, Section 5 Objection Letter of Assistant Attorney General Drew S. Days, III, July 31, 1978....	25a

II

TABLE OF AUTHORITIES

Cases	Page
<i>Baltimore & Ohio R. Co. v. United States</i> , 279 U.S. 781 (1929)	3, 18
<i>Bankers Life & Cas. Co. v. Holland</i> , 346 U.S. 379 (1953)	19
<i>Chapman v. Meier</i> , 420 U.S. 1 (1975)	15
<i>City of Petersburg, Virginia v. United States</i> , 354 F. Supp. 1021 (D.D.C. 1972), <i>aff'd mem.</i> , 410 U.S. 962 (1973)	16
<i>Connor v. Coleman</i> , 425 U.S. 675 (1976)	2, 3, 4, 7, 14, 19
<i>Connor v. Finch</i> , 431 U.S. 407 (1977)	2, 3, 4, 5, 7, 8, 14, 15, 18, 19, 21
<i>Connor v. Johnson</i> , 402 U.S. 690 (1971)	6
<i>Connor v. Johnson</i> , 265 F. Supp. 492 (S.D. Miss. 1967)	5
<i>Connor v. Johnson</i> , 330 F. Supp. 506 (S.D. Miss. 1971), <i>vacated and remanded sub nom. Connor v. Williams</i> , 404 U.S. 549 (1972)	5, 6
<i>Connor v. Waller</i> , 421 U.S. 656 (1976)	2, 6, 7, 16, 19, 21
<i>Connor v. Williams</i> , 404 U.S. 549 (1972)	6, 19
<i>Ex parte Peru</i> , 318 U.S. 578 (1943)	19
<i>Ex parte United States</i> , 287 U.S. 241 (1932)	3, 20
<i>Gaffney v. Cummings</i> , 412 U.S. 735 (1973)	17
<i>In re Potts</i> , 166 U.S. 263 (1897)	18
<i>In re Sanford Fork & Tool Co.</i> , 160 U.S. 247 (1895)	3, 18
<i>In re Washington & G.R. Co.</i> , 140 U.S. 91 (1891) ..	20
<i>Insurance Co. v. Comstock</i> , 16 Wall. 258 (1873) ..	19
<i>McClellan v. Carland</i> , 217 U.S. 268 (1910)	19
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	19
<i>Roche v. Evaporated Milk Assn.</i> , 319 U.S. 21 (1943)	19
<i>Thermtron Products, Inc. v. Hermansdorfer</i> , 423 U.S. 336 (1976)	19
<i>United States v. Haley</i> , 371 U.S. 18 (1962)	18
<i>United States v. Smith</i> , 331 U.S. 469 (1947)	3
<i>United States v. United States District Court</i> , 334 U.S. 258 (1948)	3, 20
<i>White v. Regester</i> , 412 U.S. 755 (1973)	17

III

TABLE OF AUTHORITIES—Continued

	Page
<i>Will v. United States</i> , 389 U.S. 90 (1967)	3
<i>Williams v. Simons</i> , 355 U.S. 49 (1957)	3
<i>Wise v. Lipscomb</i> , 46 U.S.L.W. 4777 (U.S. June 22, 1978) (No. 77-529)	15, 16
<i>Statutes</i>	
28 U.S.C. § 1253	20
§ 1651	3, 4
42 U.S.C. § 1973c	6, 17
Miss. Laws, 1978, chs. 515 and 535	2, 11
Miss. Code Ann. § 3121 (1956 Recomp.)	8

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trict Judge, HONORABLE HAROLD COX, United States
District Judge, and the UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
Respondents.

**MOTION FOR LEAVE TO FILE PETITION FOR
WRIT OF MANDAMUS**

Petitioners, by their attorneys, pursuant to 28 U.S.C.
§ 1651 and U.S. Sup. Ct. Rule 31(3) respectfully move
the Court for leave to file their Petition for a Writ of
Mandamus To Enforce the Mandate of This Court, at-
tached hereto, and further move the Court that an
order and rule be entered and issued directing Honor-
able J. P. Coleman, United States Circuit Judge, Honor-
able Dan M. Russell, Jr., United States District Judge,
and Honorable Harold Cox, United States District Judge,
and the United States District Court for the Southern

District of Mississippi, to show cause, if any there be, why a writ of mandamus should not be issued against them in accordance with the prayer of said petition, and why your petitioners should not have such other and further relief in the premises as may be just and meet.

Respectfully submitted,

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trict Judge, HONORABLE HAROLD COX, United States
District Judge, and the UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
Respondents.

**PETITION FOR A WRIT OF MANDAMUS
TO ENFORCE THE MANDATE OF THIS COURT**

Petitioners, Peggy J. Connor, Henry J. Kirksey, Annie E. Taylor, Augusta Wheadon, Ralthus Hayes, Catherine Crowell, Elijah Conwell, Jr., and Alma Carnegie, on behalf of themselves and all others similarly situated, and the Mississippi Freedom Democratic Party, an unincorporated association, respectfully pray that a writ of mandamus issue to compel the respondents, within 30 days of the issuance of the writ, to enter a final judgment embodying a permanent reapportionment plan for the Mississippi Legislature for the 1979 state legislative elections that complies with this Court's prior decisions

in *Connor v. Finch*, 431 U.S. 407 (1977), and *Connor v. Waller*, 421 U.S. 656 (1975).

Petitioners are the black registered voters of Mississippi who are plaintiffs in the thirteen-year-old Mississippi legislative reapportionment case which has been before this Court five times in this decade, and in which this Court's latest decision was handed down last Term in *Connor v. Finch*, *supra*. This petition is being filed to enforce the mandates and directions of this Court to the three-judge District Court issued in *Connor v. Finch*, *supra*, and *Connor v. Coleman*, 425 U.S. 675 (1976), expeditiously to promulgate a permanent court-ordered plan which meets constitutional requirements.

OPINIONS AND ORDERS BELOW

To date no final judgment embodying a permanent court-ordered legislative reapportionment plan for the Mississippi Legislature for the 1979 legislative elections has been entered, nor has any final opinion of the District Court been entered. Copies of the District Court docket entries since the issuance of this Court's mandate in *Connor v. Finch*, *supra*, are attached as Appendix A. On December 12, 1977, the District Court issued a temporary restraining order staying a special election to fill a vacancy in the Mississippi Legislature, and stated that after completion of the evidentiary hearings in the action on February 14, 1978, the District Court "will make a decision in this matter, promptly" (Appendix B, attached). On July 31, 1978, the Attorney General of the United States lodged an objection pursuant to § 5 of the Voting Rights Act of 1965 based on dilution of black voting strength to the 1978 statutory plan enacted by the Mississippi Legislature, Miss. Laws, 1978, chs. 515 and 535, and a copy of that § 5 objection letter is attached as Appendix C.

JURISDICTION

This Court has jurisdiction to issue the requested writ of mandamus to direct the District Court to comply with this Court's mandates in *Connor v. Finch*, *supra*, and *Connor v. Coleman*, *supra*, and to compel the District Court to exercise its jurisdiction to (1) enter a permanent court-ordered plan in time for the imminent 1979 legislative elections, and (2) in time for any party aggrieved by the final judgment of the District Court to obtain effective appellate review in this Court of that plan "so that the citizens of Mississippi at long last will be enabled to elect a legislature that properly represents them." *Connor v. Finch*, *supra*, 431 U.S. at 426. This Court's jurisdiction is invoked pursuant to the All Writs Act, 28 U.S.C. § 1651, and U.S. Sup. Ct. Rule 31(3). The following cases sustain the jurisdiction of this Court by mandamus to force a lower court to comply with the mandate of this Court: *Connor v. Coleman*, 425 U.S. 675 (1976); *Will v. United States*, 389 U.S. 90, 95-96 (1976); *United States v. United States District Court*, 334 U.S. 258, 263 (1948); *Baltimore & Ohio R. Co. v. United States*, 279 U.S. 781 (1929); *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895); cf. *United States v. Smith*, 331 U.S. 469 (1947). Jurisdiction also is based on the power of this Court to entertain mandamus proceedings against a three-judge District Court in a case directly appealable to this Court, *Williams v. Simons*, 355 U.S. 49 (1957), and in cases in which the appellate jurisdiction of this Court is defeated by the action of the lower court, *Ex parte United States*, 287 U.S. 241 (1932).

QUESTIONS PRESENTED

Whether after thirteen years of litigation which have failed to result either in a constitutional legislative apportionment of the Mississippi Legislature or a court-

ordered plan which meets constitutional and judicial requirements, and after the District Court has been specifically directed by this Court more than a year and a half ago to act expeditiously to promulgate a new plan which meets the requirements of the Constitution and this Court's prior decisions, the District Court may continue to delay rendering a final judgment embodying a court-ordered plan for the imminent 1979 legislative elections.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1651(a), the All Writs Statute, provides:

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

On May 31, 1977—more than a year and a half ago—this Court reversed the District Court's 1976 plan, remanded *Connor v. Finch* back to the District Court to draw up "a new plan," *Connor v. Finch*, 431 U.S. 407, 425 (1977), and directed:

"The task facing the District Court on remand must be approached not only with great care, but with a compelling awareness of the need for its expeditious accomplishment, so that the citizens of Mississippi at long last will be enabled to elect a legislature that properly represents them." *Id.* at 426.

The District Court has not yet promulgated a new court-ordered legislative reapportionment plan in compliance with this Court's directives in *Connor v. Finch*, *supra*, and has in effect once again delayed consideration of a permanent court-ordered plan for the 1979 legislative elections. See *Connor v. Coleman*, 425 U.S. 675 (1976).

A. Prior Proceedings

The prior history of this case is charted in this Court's opinion last Term in *Connor v. Finch*, 431 U.S. at 410-12. "Twelve years have passed [now more than thirteen] since this litigation began, but there is still no constitutionally permissible apportionment plan for the Mississippi Legislature," 431 U.S. at 425. Legislative reapportionment plans enacted in 1962, 1966, and 1971 were struck down by the District Court for unconstitutional malapportionment. The 1967, 1971, and 1975 state legislative elections all were held under District Court-ordered plans which relied extensively on multi-member districts in both houses of the Legislature, and which contained excessive deviations from population equality among the districts.¹ *Connor v. Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967) (three-judge court); *Connor v. Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor v. Williams*, 404 U.S. 549 (1972); Appendix, *Connor v. Finch*, 431 U.S. 407, Vol. II, 207-38 (1975 plan).

Both the 1971 court-ordered plan and the 1975 court-ordered plan evaded appellate review on their merits in this Court. In 1971 the District Court failed altogether to formulate a final plan for Mississippi's three largest counties—Hinds, Harrison, and Jackson Counties, created large multi-member districts for those counties, and indicated its intent to appoint a Special Master as of January 1, 1972 to make findings regarding the feasibility of single-member districts for those counties. *Connor v.*

¹ The total deviations in the 1967 court-ordered plan were 20.83% in the House and 23.24% in the Senate. The total deviations in the 1971 and 1975 court-ordered plans were 19.73% in the House and 18.90% in the Senate, excluding floterial districts. Brief for Private Appellants, *Connor v. Finch*, 431 U.S. 407, pp. 9-10. In *Connor v. Finch*, *supra*, this Court declared deviations of 19.3% in the House and 16.5% in the Senate in the 1976 court-ordered plan unconstitutional by Equal Protection standards.

Johnson, supra, 330 F. Supp. at 519. Interim relief for Hinds County for the 1971 elections, ordered by this Court, *Connor v. Johnson*, 402 U.S. 690, 692 (1971), was denied because the District Court found insurmountable difficulties. 330 F. Supp. 521. On the appeal from the 1971 court-ordered plan, this Court declined to review the prospective validity of the 1971 plan on its merits in the absence of a final plan for those three counties, holding that "it would be preferable to have before us a final judgment with respect to the entire State." *Connor v. Williams*, 404 U.S. 549, 551-52 (1972). Relying on the District Court's stated intention to appoint a Special Master as of January 1, 1972 to take testimony and make findings regarding the subdivision of Hinds, Harrison, and Jackson Counties into single-member districts, this Court vacated the judgment and remanded with directions to the District Court that "[s]uch proceedings should go forward and be promptly concluded." 404 U.S. at 551-52. No Special Master was appointed.

In 1975 the District Court approved as constitutional the Mississippi Legislature's 1975 statutory plan, and this Court reversed, holding that the legislative plan could not be effective as law until it had been submitted and approved under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *Connor v. Waller*, 421 U.S. 656 (1976). The Court also directed:

"This reversal is, however, without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan v. Howell*, 410 U.S. 315 (1973); *Connor v. Williams*, 404 U.S. 549 (1972); *Chapman v. Meier*, 420 U.S. 1 (1975)." 421 U.S. at 656-57.

When the legislative plan was submitted to the Attorney General of the United States, an objection was lodged

based on dilution of black voting strength, and the District Court then proceeded to implement a temporary court-ordered plan for the 1975 elections only which was identical to the objected-to legislative plan except for seven districts, again relying extensively on multi-member districts and excessive population variances.

Because the temporary 1975 court-ordered plan was ordered into effect on July 11, 1975—only 25 days before the August 5 legislative primary elections (Appendix, *Connor v. Finch, supra*, Vol. II, p. 207)—no effective appeal to this Court could be taken. But plaintiffs did file a motion to alter or amend the judgment pointing out that the temporary 1975 plan violated the requirements for court-ordered plans established by this Court's prior decisions cited in *Connor v. Waller, supra*.

In a subsequent order, the District Court indicated its "firm determination" (Order of Aug. 1, 1975) to promulgate a permanent plan by February 1, 1976. When on January 29, 1976, the District Court ordered a stay of further proceedings pending the outcome of other cases in this Court raising reapportionment issues, this Court on May 19, 1976 allowed the filing of a petition for a writ of mandamus and directed the District Court

"to 'bring this case to trial forthwith . . . ' and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date thereafter." *Connor v. Coleman*, 425 U.S. at 679.

A hearing was held and a final judgment embodying a permanent plan was entered on November 18, 1976. On appeals by all the parties, including the United States as plaintiff-intervenor, this Court reversed, holding that the District Court's 1976 permanent plan failed "to meet the most elemental requirement of the Equal Protection Clause in this area—that legislative districts be 'as nearly of equal population as is practicable.'" *Connor v. Finch*, 431 U.S. at 409-10. In addition, this Court gave further guidance to the District Court on plaintiffs' challenges that the 1976 plan's apportionment of some districts impermissibly diluted black voting strength, and held:

"It is therefore imperative for the District Court, in drawing up a new plan, to make every effort not only to comply with established constitutional standards, but also to allay suspicions and avoid the creation of concerns that might lead to new constitutional challenges [footnote omitted]." 431 U.S. at 425.

B. Proceedings on Remand

On remand, a trial has been held, and at least seven proposed court-ordered legislative reapportionment plans have been presented for consideration by the District Court, but no final judgment on a constitutionally valid permanent plan has yet been entered. The qualifying deadline for party candidates in the 1979 legislative primary elections is June 7, 1979. Miss. Code Ann. § 3121 (1956 Recomp.)

The District Court on August 2, 1977, directed the parties within 90 days to file new proposed court-ordered plans, and invited the Mississippi Legislature to file a plan of its own. Order of Aug. 2, 1977. In response to this order, and pursuant to further directives and proceedings, five proposed court-ordered reapportionment plans were filed by the private plaintiffs, the United States as plaintiff-intervenor, and the Mississippi Legislature. These plans are:

(a) Department of Justice precinct plan, based on voting precincts, filed October, 1977, revised February, 1978.

(b) Department of Justice Census enumeration district (ED) plan based on Census ED's, filed October, 1977.

(c) *Connor* plaintiffs' precinct plan, based on voting precincts, filed October, 1977, revised February, 1978, revised March, 1978.

(d) Mississippi Legislature's ED plan, based on Census ED's, filed October, 1977.

(e) Mississippi Legislature's precinct plan, based on voting precincts, filed March, 1978.

The trial was commenced on November 21 and 22, 1977, and concluded on February 14, 1978.

On May 3, 1978, Special Master W. D. Neal—appointed in 1975—filed a proposed court-ordered plan with the District Court, and filed additional alternatives and revisions on May 9 and 11. On May 15 the District Court ordered the Special Master to file a final plan, directed the parties and the Special Joint Legislative Committee on Reapportionment of the Mississippi Legislature to file any objections to the Special Master's proposal within 15 days. The Special Master's final plan was filed May 18, and the parties and the Joint Reapportionment Committee subsequently filed comments and objections. On June 30 the Special Master responded to the comments and objections of the parties, and filed revisions to his proposed final plan.

On June 12, noting that "the differences among the various parties . . . are so narrow that they could easily be resolved among the parties themselves," the court directed a settlement conference among the parties within 15 days "in which they are requested to explore every reasonable possibility for the entry of a consent decree requirements of court-ordered plans established by this the earliest practicable date thereafter." 425 U.S. at 679.

...” Order of June 12, 1978. Pursuant to the District Court’s June 12 order, counsel for all parties met for settlement negotiations during June, July, and August and worked out a settlement plan, which was then presented by counsel for the defendants to the Joint Reapportionment Committee of the Mississippi Legislature (the Legislature not being in session) for its approval. Meanwhile, at an informal conference with counsel for the parties on August 4, Circuit Judge J. P. Coleman set an August 20 deadline for these settlement negotiations, and indicated that if these negotiations failed, a plan of the court’s own choosing would be ordered into effect.

Upon receipt of the settlement plan worked out by the parties in these negotiations, the Mississippi Legislature’s Joint Reapportionment Committee took a poll of the members of the Legislature, and a majority of both houses of the Mississippi Legislature by a vote of 80 to 13 in the House and 26 to 7 in the Senate voted in favor of accepting the settlement plan as a court-ordered plan in the event that the Legislature’s 1978 statutory plan did not meet approval under the Voting Rights Act. On August 16 the Joint Reapportionment Committee passed a resolution recommending that the defendants agree to the settlement plan. On September 5, however, negotiations on a proposed consent decree broke down, and the District Court was informed that although the parties had agreed on a statewide reapportionment plan for both houses of the Mississippi Legislature, they were unable to agree on the wording of a proposed consent decree.³

³ The *Connor* settlement plan was based in large part on the 1978 statutory plan. Twenty districts in the House and ten in the Senate were realigned to meet the objections of plaintiffs and the United States to dilution of black voting strength. The drafting of a proposed consent decree was blocked when on September 5 attorneys for the State insisted that plaintiffs and the United States stipulate that the settlement plan could not be introduced in evidence in the § 5 declaratory judgment proceeding on the statutory plan in the District Court for the District of Columbia, and could not be used

Having negotiated a settlement of *Connor v. Finch* which was acceptable to all the parties, except for the wording of a consent decree, officials for the State of Mississippi then chose to defeat these settlement efforts by pursuing their efforts to gain approval under § 5 of the Voting Rights Act of a separate, statutory plan which provides less protection for the voting rights of black citizens than the *Connor* settlement plan. After conclusion of the trial in *Connor*, the Mississippi Legislature enacted and the Governor signed on April 21, 1978, a new statutory reapportionment plan. Miss. Laws, 1978, chs. 515 and 535. This plan was submitted to the Attorney General pursuant to § 5 of the Voting Rights Act of 1965 on June 1. On July 31 the Attorney General determined that he was unable to conclude that the submitted plans for the Senate and House “do not have the purpose or effect of abridging the right to vote because of color,” and lodged an objection to the statutory plan.³ On August 1 the State filed an action in the District Court for the District of Columbia pursuant to § 5 of the Voting rights Act, *State of Mississippi v. United States*, Civil No. 78-1425, seeking a declaratory judgment that the statutory plan does not have the purpose or effect of abridging the right to vote on account of race or color. That action went to trial on September 18 through 27. Briefs were filed, and oral argument in that case presently is scheduled for January 16, 1979.⁴

as a measure of whether the statutory plan was retrogressive of black voting strength. Because the statutory plan provided fewer majority black districts than the settlement plan, and was retrogressive as measured by the settlement plan, plaintiffs and the United States refused to agree to those proposed stipulations.

³ A copy of the § 5 objection letter is attached hereto as Appendix C.

⁴ One of the *Connor* plaintiffs Henry J. Kirksey, and nine other black Mississippi voters intervened in that action and participated in the trial.

On August 3 the State official defendants in *Connor v. Finch* filed a motion for a stay requesting the District Court in *Connor* to withhold judgment on a permanent court-ordered plan until the § 5 lawsuit to gain approval of the statutory plan was concluded, and alleged in support of their motion: "Failure to grant the relief requested, on the other hand, may well have the effect of causing the Legislature's statutory plan . . . potentially subjected to a charge in a Section 5 proceeding that [it] is a retrogression from a plan imposed, or about to be imposed by this Court . . ." The *Connor* settlement plan provides 49 black population majority districts and 39 black voting age population majority districts, while the statutory plan provides only 46 black population majority districts and only 36 black voting age population majority districts. In addition, the Attorney General determined in his § 5 objection, and the Department of Justice and black voters who intervened in the § 5 declaratory judgment action presented evidence in the District Court for the District of Columbia, that the statutory plan fragments and dilutes black voting strength in a number of districts.

On October 12, 1978, plaintiffs in *Connor v. Finch* filed a motion for entry of judgment requesting the District Court to order into effect the *Connor* settlement plan worked out in the settlement negotiations across the summer, and approved by a majority of both houses of the Mississippi Legislature. In addition, on November 15 the plaintiffs filed a motion for special elections to fill three vacancies in the Mississippi Legislature and to hold special elections in seven additional black voting age population majority districts in the *Connor* settlement plan—in areas in which white voting majority multi-member districts were created in the temporary 1975 plan—prior to the convening of the 1979 session of the Legislature on January 2.

A hearing was held on these motions on November 29, at which Judge Coleman indicated without dissent from the other Judge present—District Judge Harold Cox—that the court did not intend to implement the settlement plan because it had not been agreed to in a consent decree by the defendants. Judge Coleman also indicated—without dissent from Judge Cox—that the District Court did not intend to promulgate a permanent court-ordered plan while the § 5 declaratory judgment proceedings on the statutory plan were continuing. Thus, in effect, the District Court has granted the stay requested by the *Connor* defendants, and has refused—despite the explicit directions of this Court that a new plan be promulgated "with a compelling awareness of the need for its expeditious accomplishment"—to order into effect a new court-ordered plan for the 1979 legislative elections.

When the 1979 regular session of the Mississippi Legislature convenes on January 2, there will be at least three vacancies in the Mississippi Legislature, and possibly more. One vacancy has existed since December 10, 1977, when Rep. George W. Rogers, Jr., of Warren County resigned to take a position with the Central Intelligence Agency in Washington. On December 12, 1977, the District Court issued a temporary restraining order—which is still in effect—restraining a special election to fill that vacancy under the temporary 1975 plan on findings, *inter alia*, that an evidentiary hearing on court-ordered plans had been scheduled and "this Court has indicated that it will make a decision in this matter, promptly, after the scheduled hearings are completed." Temporary Restraining Order of Dec. 12, 1978 (Appendix B, attached). Two other legislators have been elected to state court judgeship positions, and their terms of office will commence on January 1.

REASONS FOR GRANTING THE WRIT

I. THE REFUSAL OF THE DISTRICT COURT TO RENDER A FINAL JUDGMENT ON A PERMANENT PLAN AMOUNTS TO A NULLIFICATION OF AND A FAILURE TO ENFORCE THIS COURT'S MANDATES IN *CONNOR v. FINCH* AND *CONNOR v. COLEMAN*.

More than thirteen years have passed since plaintiffs initiated this litigation seeking constitutional reapportionment of the Mississippi Legislature. This case already has been before this Court five times in this decade, and still plaintiffs have not obtained the relief to which they are entitled. Until the legislature is reapportioned consistently with the Fourteenth and Fifteenth Amendments, the people of Mississippi will continue to suffer irreparable injury to their rights as voters. To date, every effort to bring this litigation to a final judgment has been unsuccessful. The District Court after a year and half of proceedings on remand still has not entered a final judgment. This failure of the District Court to act promptly completely violates and nullifies this Court's mandate and direction that the District Court draw up a new plan "with a compelling awareness of the need for its expeditious accomplishment, so that the citizens of Mississippi at long last will be enabled to elect a legislature that properly represents them," *Connor v. Finch, supra*, 431 U.S. at 426. The mandate of this Court in *Connor v. Coleman*, 425 U.S. 675, 678 (1976) "to bring this case to trial forthwith . . . to the end of entering a final judgment . . . to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections," reiterated in *Connor v. Finch, supra*, remains unfulfilled.

The District Court itself, in staying the special election to fill the George Rogers vacancy on December 12,

1977, stated its intention that after the conclusion of the February 14, 1978 hearing it would "make a decision on this matter, promptly." Thus, the District Court has not only violated the mandates of this Court, but it also has violated its own assurances to the parties.

This Court has held that reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt, *Connor v. Finch, supra*, 431 U.S. at 414-415; *Chapman v. Meier*, 420 U.S. 1, 27 (1975). "[I]t is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." *Wise v. Lipscomb*, 46 U.S.L.W. 4777, 4779 (U.S. June 22, 1978, No. 77-529). In the eighteen years since the 1960 decennial census the Mississippi Legislature has availed itself of the opportunity to reapportion on five occasions, in 1962, 1971, 1973 and 1975. "[B]ut there is still no constitutionally permissible apportionment plan for the Mississippi Legislature," *Connor v. Finch, supra*, at 425. The Attorney General has lodged a § 5 objection to the 1978 legislative plan for dilution of black voting strength, and the State still has not yet obtained § 5 approval of its plan in the District Court for the District of Columbia. The qualifying deadline for candidates in the 1979 legislative elections is now less than six months away.

Thus, the "reasonable opportunity" available to the Mississippi Legislature has been exhausted with respect to the scheduled 1979 elections, and it has now become incumbent upon the District Court to formulate a final plan of its own. "Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the 'unwelcome obligation,'

Connor v. Finch, *supra*, at 415, of the federal court to devise and impose a reapportionment plan pending later legislative action." *Wise*, *supra*, at 4779. The mere pendency of a § 5 declaratory judgment proceeding is no reason for the District Court to defer judgment. "Pending such submission and clearance, if a State's electoral processes are not to be completely frustrated, federal courts will at times necessarily be drawn further into the reapportionment process and required to devise and implement their own plans." *Wise v. Lipscomb*, *supra*, at 4779. The Mississippi Legislature's 1978 statutory reapportionment plan will not be effective as law until and unless cleared pursuant to § 5 of the Voting Rights Act. *Connor v. Waller*, *supra*. While the § 5 issue of the discriminatory purpose or effect of that statutory plan will be decided *de novo* by the District Court for the District of Columbia, it has nevertheless been recognized by that Court that the Attorney General's interpretation of Section 5 of the Voting Rights Act is "entitled to deference." *City of Petersburg, Virginia v. United States*, 354 F. Supp. 1021, 1031 (D.D.C. 1972) (three-judge court), *aff'd mem.*, 410 U.S. 962 (1973). Accordingly, the State of Mississippi has a heavy burden indeed. The defendants themselves recognized this in their motion for a stay of proceedings when they apparently conceded as a reason for the stay that their statutory plan provides less protection of the voting rights of black voters in Mississippi than the plans currently under consideration by the District Court in *Connor*.

The District Court has a duty to order into effect a new permanent plan now because (1) this Court has ordered it to, (2) a court-ordered plan is necessary to fill existing and anticipated vacancies in the Mississippi Legislature prior to the 1979 legislative elections, (3) the 1979 legislative elections are imminent, and (4) Mississippi has not yet obtained approval under § 5 of the Voting Rights Act of its statutory plan.

No harm can come to the defendants or the State of Mississippi if the District Court promulgates a court-ordered plan now, because a § 5-approved statutory plan automatically supersedes any court-ordered plan.

On the other hand, if the District Court is permitted to withhold final judgment, and the statutory plan is not approved in the § 5 declaratory judgment action, plaintiffs will suffer irreparable injury in that they will be effectively denied an appeal to this Court—because of time limitations—from whatever permanent plan the District Court in *Connor* orders. The § 5 declaratory judgment proceeding is likely to continue for several more months. Although that case has been tried, oral argument on the briefs has not been scheduled until January 16, 1979. A final judgment in that proceeding is expected shortly after that. But the State already has announced that if § 5 approval is denied by the District Court, it will appeal to this Court. If the D.C. District Court rules in favor of the State, it is likely that either the Department of Justice or the intervenors (one of whom is a *Connor* plaintiff) will appeal. In any event it is not likely that that proceeding will be concluded before June, 1979.

But even if the State succeeds in obtaining clearance of the statutory plan pursuant to § 5, under that section a § 5 declaratory judgment does not "bar a subsequent action to enjoin enforcement" of the plan under either the Fourteenth or Fifteenth Amendments. 42 U.S.C. § 1973c. Since the population deviations in the statutory plan for both houses of the Mississippi Legislature exceed the 10% limit of prima facie constitutionality established by this Court in *Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973), and are greater than any of the plans filed with the District Court in *Connor*, it is likely that further litigation on the statutory plan would ensue.

Twice in this decade appellate review of the court-ordered plans for 1971 and 1975 has been frustrated by the fact that the District Court failed to order final plans, and—in 1975—that the District Court's plan was promulgated so close to the August legislative primary elections as to preclude appellate review. The District Court's plan for the 1979 legislative elections must be ordered into effect immediately so that the appellate rights of any aggrieved party will not be cut off. Any further delay will grievously and irreparably jeopardize the chances that a constitutional legislative reapportionment plan will be approved by this Court in time for the 1979 legislative elections.

II. THIS COURT HAS JURISDICTION TO GRANT THE RELIEF REQUESTED.

This Court has full jurisdiction, by mandamus, to issue whatever orders are necessary to effectuate its prior judgments:

“When a lower federal court refuses to give effect to, or misconstrues, our mandate, its action may be controlled by this court, either upon a new appeal or by a writ of mandamus, *Re Potts*, 166 U.S. 263, 265; *Re Sanford Fork & Tool Co.*, 160 U.S. 247, 255, and cases cited. It is well understood that this Court has power to do all that is necessary to give effect to its judgments.” *Baltimore & Ohio R. Co. v. United States*, 279 U.S. 781, 785 (1929); accord, *United States v. Haley*, 371 U.S. 18 (1962).

Further, this Court consistently has reaffirmed its power, by mandamus, to compel a lower court to decide a pending case when it has a duty to do so:

“A ‘traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal

court has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.’ *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943); *Ex parte Peru*, 318 U.S. 578, 584 (1943); *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382 (1953). ‘Repeated decisions of this Court have established the rule . . . that the writ will lie in a proper case to direct a subordinate Federal court to decide a pending cause,’ *Insurance Co. v. Comstock*, 16 Wall. 258, 270 (1873), or to require ‘a Federal court of inferior jurisdiction to reinstate a case, and to proceed to try and adjudicate the same.’ *McClellan v. Carland*, 217 U.S. at 280.” *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 352 (1976).

Issuance of the extraordinary writ here is required because of the extraordinary delay of the District Court in promulgating a permanent court-ordered plan which meets constitutional requirements. Four times in this decade, in *Connor v. Williams*, 404 U.S. 549 (1972); *Connor v. Waller*, 421 U.S. 656 (1975); *Connor v. Coleman*, 425 U.S. 675 (1976); and more recently in *Connor v. Finch*, 431 U.S. 407 (1977), this Court has directed the District Court to enter a permanent plan which satisfies the Constitution and the prior decisions of this Court, but still there is no legally adequate District Court reapportionment plan for Mississippi. The command of *Reynolds v. Sims*, 377 U.S. 533, 585 (1964), that “it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan” remains unfulfilled.

Petitioners have no other adequate remedy. Petitioners repeatedly have requested the District Court to enter a

permanent plan, but no response has been forthcoming. By refusing to enter a permanent plan, and by inaction in effect granting the defendants' motion for a stay of judgment, the District Court has defeated petitioners' right of appeal from a final judgment of the District Court provided by 28 U.S.C. § 1253. Jurisdiction to issue the writ lies in this Court, which is the court with direct appellate jurisdiction over any final judgment the District Court may enter. *United States v. United States District Court*, 334 U.S. 258, 263-64 (1948); *Ex parte United States*, 287 U.S. 241, 248-49 (1932); *In re Washington & G. R. Co.*, 140 U.S. 91 (1891).

CONCLUSION

On May 31, 1977, this Court directed the District Court to act expeditiously in devising a new permanent court-ordered reapportionment plan which meets constitutional requirements. A year and a half of proceedings on remand, which included the filing of at least seven proposed plans with the District Court, have not yet resulted in a final judgment embodying a permanent court-ordered plan. Time now is of the essence. The qualifying deadline for the 1979 quadrennial legislative elections is now less than six months away.

Under these circumstances, the mere pendency of § 5 declaratory judgment proceedings in the District Court for the District of Columbia seeking approval of the new statutory plan does not justify any further delay in the District Court's entry of a final judgment because (1) if the District Court for the District of Columbia denies approval of the statutory plan, and that judgment is affirmed on appeal, then—because of time restraints—petitioners will be denied their right of appeal from whatever plan the Mississippi District Court orders into effect for the 1979 legislative elections, and (2) even if the District Court for the District of Columbia

approves the statutory plan, this will not end the litigation on the statutory plan, because defendants and the intervenors in that case will have a right to appeal that decision, and Mississippi voters will have a right to file a separate action challenging the constitutionality of the statutory plan on Fourteenth Amendment grounds.

PRAYER FOR RELIEF

For the foregoing reasons, and on the basis of the authorities cited, petitioners pray that a writ of mandamus issue to Honorable J. P. Coleman, United States Circuit Judge, Honorable Dan M. Russell, Jr., United States District Judge, Honorable Harold Cox, United States District Judge, and to the United States District Court for the Southern District of Mississippi, directing them within 30 days to enter a final judgment embodying a permanent court-ordered reapportionment plan for the Mississippi Legislature for the 1979 legislative elections that complies with this Court's prior decisions in *Connor v. Finch*, 431 U.S. 407 (1977), and *Connor v. Waller*, 421 U.S. 656 (1975).

Respectfully submitted,

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Appendices

APPENDIX A

DOCKET ENTRIES OF DISTRICT COURT
PROCEEDINGS SINCE MAY 31, 1977

DATE	PROCEEDINGS
6- 6-77	SLIP OPINION OF SUPREME COURT OF THE UNITED STATES: Reversed and remanded. The judgment or mandate will issue after expiration of 25 days from date of opinion (5-31-77) unless a timely petition for rehearing is filed, filed. (Copies mailed Judges Coleman, Russell & Cox and copy mailed Mr. William D. Neal).
7-28-77	CERTIFIED COPY OF JUDGMENT OF SUPREME COURT OF THE UNITED STATES: The judgment of USDC in these causes is hereby reversed with costs and remanded to USDC for S/D of Miss. for further proceedings in conformity with the opinion of this Court, further ordered that the United States recover from Cliff Finch, Governor of Mississippi, et al \$17,563.00 and Peggy J. Connor et al in Nos. 76-777 and 76-935 recover from Cliff Finch, Governor of Mississippi, et al \$300 for their costs herein expended, filed and entered OB 1977, pages 1673-1674. (Copies mailed Judges Coleman & Russell and handed Glenda for Judge Cox and copy mailed Mr. William D. Neal).
7-28-77	JS 5 CARD.
08-02-77	ORDER: Attys. of record to file motions no later than 08/20/77; Dept. of Justice and private pltf's. directed to file within 90 days or sooner, a complete plan for redistricting Miss. St. Senate and House agreeably to standards of Supreme Court; Clerk of Court to forward copy of this order to the Governor, Lt. Governor and Speaker of House; As soon as practicable, the Court will hear evidence on fees and expenses allowed its special masters and attys;

DATE	PROCEEDINGS
	The Dept. of Justice will file three copies thereof with the Clerk of this Court for use of the Judges, the printed record; Deadlines herein imposed will in no respect be extended, filed and entered OB 1977, pages 1689-1691. (Copies handed all attys. of record; copy handed Glenda for Judge Cox and mailed Judge Russell; Copies handed office of the Governor, Lt. Governor and House of Representatives; Copies handed Senator's offices and all press.)
08-11-77	Supplemental motion of pltfs. for an award of attorney's fees, with Affidavit of Frank R. Parker and cert. of service, filed. (Copy mailed Judges Russell and Coleman and placed in Glenda's box for Judge Cox.)
08-19-77	Motion of defts. Cliff Finch, Gov. of Miss., et al to stay execution of mandate as to taxation of costs, with cert. of service, filed. (Copy handed Glenda and Gwen for Judges Russell and Cox mailed JUDGE Coleman.)
08-22-77	Motion of the United States for entry of order requiring Special Master to file detailed explanation of plan and for order establishing a schedule, with notice of motion on 09/02/77 at 9:00 AM in Jackson and cert. of service, filed (Copies placed in Glenda and Gwen's. boxes and mailed Judge Coleman)
08-22-77	Pltf's. amended motion for an award of attorney's fees, with cert. of service and indefinite notice of motion, filed. (Copies placed in Glenda and Gwen's boxes and mailed Judge Coleman.)
8-24-77	ORDER: Stay of mandate of the Supreme Court as to taxation of costs pending on application to the Supreme Court is granted upon condition that motion be filed in the Supreme Court not later than 9-10-77, with copies thereof filed in this Court,

DATE	PROCEEDINGS
	filed and entered OB 1977, pages 1881-1882. (Copies handed all local attys. and mailed Mr. Jones & Johnson, Dept. of Justice; copy handed Glenda for Judge Cox and handed Gwen for Judge Russell; copies handed office of the Governor, Lt. Gov., House of Representatives and all Senators' offices and notified all press).
8-24-77	ORDER: The Court has already directed Dept. of Justice and private pltfs. to file a plan within 90 days and it is indicated that State of Miss. may file one within same period. If any of these three plans prove acceptable to the Court it will not be necessary for the Special Master to file a new plan, so action on the Motion of the United States for entry of order requiring Special Master to file detailed explanation of plan and for establishing a schedule will be deferred pending developments. Should the Special Master be called upon to file a plan, the motion of the United States will at that time be granted; upon filing of plans herein referred to, the Court will adopt a schedule for further proceedings in which determination of this litigation will be expedited to the limit; the Clerk of this Court will provide a copy of this order to counsel of record, filed and entered OB 1977, pages 1883-1884. (Copies handed all local attys. and mailed Mr. Jones & Johnson, Dept. of Justice; copy handed Glenda for Judge Cox and handed Gwen for Judge Russell; copies handed office of the Governor, Lt. Gov., House of Representatives and all Senators' offices and notified all press).
9- 9-77	Notice of United States of filing of record, with cert, of service, filed.
9- 9-77	Received from United States three copies of Volumes I, II and III of the Appendix that was printed at the request of the United States, as directed in

DATE	PROCEEDINGS
	paragraph six of Order of this Court dated 8-1-77, which directed that these copies be filed with the Clerk of this Court for the use of the Judges in the further consideration of this case. U.S. requests that at conclusion of this litigation it be permitted to withdraw at least one of the copies. (The three Volumes mailed to Judges Coleman and Russell and handed Glenda for Judge Cox, together with copy of Notice of filing of record).
09-12-77	Submission of deft's. motion to retax costs pursuant to order of 08/23/77, with cert. of service, filed. (Copy mailed Judge Coleman, mailed Judge Coleman, mailed Gwen for Judge Russell and placed in Glenda's box for Judge Cox.)
10-29-77	Submission of PLANS for the APPORTIONMENT of The Legislature of the State of Mississippi, with cert. of service and attachments, filed. (Copies mailed Judges Coleman & Russell & placed in Glenda's box for Judge Cox.)
10-29-77	Map in support of Plans of The Legislature of the State of Mississippi—House of Representatives—State of Mississippi, filed.
10-29-77	Map in support of Plans of the Legislature of the State of Mississippi—SENATE—State of Mississippi, filed.
10-31-77	MAPS PLACED IN vault.
10-31-77	PLANS submitted by the United States pursuant to Order of 8-1-77, with Attachments A thru N, incl., and cert. of service, filed.
10-31-77	Maps in support of Plans by United States, being Attachment O, filed. (Copies of Plans mailed Judges Coleman & Russell & placed in Glenda's box for Judge Cox—Maps held in Clerk's office pending their request).
10-31-77	MAPS PLACED IN VAULT.

DATE	PROCEEDINGS
10-31-77	Submission of Data in support of Plans for the apportionment of the Legislature of the State of Mississippi, with cert. of service and attachments, filed. (Copies mailed Judges Coleman & Russell & placed in Glenda's box for Judge Cox).
10-31-77	Pltfs'. submission of MISSISSIPPI LEGISLATIVE REAPPORTIONMENT PLANS, with cert. of service and Attachments, filed. (Mr. Frank Parker stated that he mailed the three Judges their copies).
11-03-77	ORDER. State will be required to justify use of census enumeration districts in its plan rather than precincts without disrupting local elections in 1979. Proposed plans will be evaluated in the light of the guidelines previously stated by this Court and by the Supreme Court. Special Master, W. D. Neal, shall proceed to a comparison and evaluation of all plans filed. He may, is so advised, promptly file a plan of his own composition without delaying litigation and be prepared to testify as to pertinent aspects of all presented plans. Counsel will be further notified that as the forthcoming hearings the Court intends to explore all pending issues. Notice to counsel may be accomplished by mailing a true copy of this Order at his appropriate address, filed and entered OB 1977, pages 2450-2452. (Certified copies mailed all attys. of record, Judge Coleman, Mr. Neal; Handed Jennie for Judge Russell and placed in Glenda's box for Judge Cox.)
11- 8-77	ORDER: Clerk of Court is ordered to notify all counsel of record that the Court is hereby setting this matter for hearing on Monday, Nov. 21, 1977, at 9:30 AM, in fourth-floor courtroom, U.S. Court-house & Post Office Building, Jackson, Miss. In addition to instructions contained in this Court's Order of 11/02/77, the Court will hear evidence on

DATE

PROCEEDINGS

various plans submitted in the following order; First; On behalf of the private pltfs.; Second: On behalf of the Department of Justice; Third: On behalf of the defts; and Fourth: on behalf of the Legislative plans, filed and entered OB 1977, page 2464. (Copies mailed attys. of record and Mr. William D. Neal.)

- 11- 8-77 Motion of John Haynes and Prentiss County, Miss. to Intervene as pltfs., with notice of Motion on 11-21-77, at 9:30 A.M., in Jackson, before Judges James P. Coleman, Harold Cox and Dan M. Russell, and cert. of service with copy of Complaint of Intervenors attached as Exhibit "A" thereto, filed.
- 11-10-77 Pltf's. notice of deposition of State Rep. Thomas H. Campbell, III on 11/14/77, with cert. of service, filed. (Copies handed Judge Russell and Glenda for Judge Cox and mailed Judge Coleman on 11-11-77).
- 11-10-77 Submission of additional data in support of Plans for the Apportionment of the Legislature of the State of Mississippi, with cert. of service, filed.
- 11-10-77 SENATE PLAN MAPS as additional data in support of plans for apportionment, filed. (MAPS PLACED IN VAULT)
- 11-10-77 HOUSE PLAN MAPS as additional data in support of plans for apportionment, filed. (MAPS PLACED IN VAULT.)
- 11-11-77 Motion of defts. for stay of the taking of deposition of State Representative Thomas H. Campbell, III, with cert. of service, filed.
- 11-11-77 Pltf's. notice of deposition of Senator Jim Noblin on 11/15/77, with cert. of service, filed.

DATE

PROCEEDINGS

- 11-12-77 ORDER: Consideration of and action upon the Government's proposals shall be the first order of business in the hearing schedules for 11/21/77; Taking of all depositions noticed before 11/21/77 shall be stayed pending this hearing; Defts. are requested as soon as convenient to file formal stipulations setting forth basis for population figures and population for each precinct named in House or Senate, filed and entered OB 1977, pages 2500-2502. (Copies mailed all attys. of record, Judges Coleman and Russell. Copy placed in Glenda's box on Monday 11/14/77.)
- 11-14-77 Return of Columbus Keepler on deposition subpoena duces tecum showing execution as to Jim Noblin, filed.
- 11-15-77 Plaintiffs' Motion to Vacate Order Staying Discovery, with Certificate of Service and Notice of hearing on 11-21-77, filed. Copies transmitted to Judges.
- 11-15-77 Plaintiffs' Opposition to Motion to Intervene of John Haynes and Prentiss County, with Certificate of Service, filed. Copies transmitted to Judges.
- 11-15-77 Plaintiffs' Motion to Compel Defendants to Furnish Plaintiffs with Maps and Copies of all Pleadings and Exhibits, with Certificate of Service and Notice of hearing. Copies transmitted to Judges.
- 11-16-77 Notice of Thomas J. Ginger of appearance as co-counsel for plaintiff, with Certificate of Service, filed.
- 11-18-77 Corrections to House Plan A/C as originally submitted to the Federal Court, with Certificate of Service, filed. Copies transmitted Judges.

DATE	PROCEEDINGS
11-21-77	MEMORANDUM of the United States in response to the motion of John Haynes and Prentiss County for leave to intervene, filed. (Copies handed Gwen for Judges. Russell and handed Glenda for Judge Cox and Judges Coleman. Filed at direction of B. Price.)
11-21-77	Corrections to plths'. precinct plan, House of Representatives, with cert. of service, filed. (Copy handed Gwen for Judge Russell and handed Glenda for Judges Cox and Coleman.)
11-21-77	Defts'. motion to quash subpoena duces tecum, with copy of subpoena attached and notice of motion on 11-21-77, at 9:30 A.M., in Jackson, before the Three-Judge Court, filed. (Copies handed Glenda for the three Judges).
11-21-77	Memorandum of United States in response to Courts' Nov. 11, 1977 Order, with attachments, filed. (Copies handed Glenda for the three Judges). (Filed at direction of Glenda per instructions in Courtroom).
11-21-77	Statement of Stewart Vail—lodged at the direction of Judge Harold Cox.
11-21-77	Statement of Hoyt T. Holland, Jr., Special Master dated 8-1-75 in the amount of \$935.29, filed.
11-21-77	Statement of Hoyt T. Holland, Jr., Associate Special Master dated 10-14-76 in the amount of \$4863.15, filed.
11-21-77	EXHIBITS: P-1 through P-12, D-1 and D-2, filed. Exhibits P-6, P-7, P-10 and P-12 in vault.
11-28-77	Pltf's. motion for preliminary injunction against special election, or alternatively, for special election relief, with cert. of service, Exhibit A and notice of motion to be set by Court, filed.

DATE	PROCEEDINGS
11-29-77	ORDER ON DISCOVERY: Schedule established for discovery on proposed court-ordered legislative reapportionment plans filed with the Court as set out; Private plths. may take deposition of Rep. Thomas H. Campbell III but may not be taken until after current Special Session of Miss. Legislature has adjourned, and further private plths. shall be limited in their depositions of Circuit Clerks to depositions of 5 Circuit Clerks of State of Miss.; Hearing in this action shall reconvene on Tuesday, 2-14-78, at 9:00 A.M., filed and entered OB 1977, pages 2618-2619. (Copies handed US Atty. and Frank Parker and mailed other attys. of record.)
11-29-77	ORDER: Defts. having informed the Court that they would furnish plths. with copies of maps attached to their Submission of Additional Data by Monday, 11-28-77, it is therefore Ordered that plths'. motion to compel defts. to furnish plths. with exhibits be, and is hereby denied, filed and entered OB 1977, page 2620. (Copies handed US Atty. and Frank Parker and mailed other attys. of record.)
11-29-77	ORDER: Motion for leave to intervene filed by John Haynes and Prentiss County, Miss. is hereby granted for limited purpose of permitting these intervenors to oppose the proposed court-ordered reapportionment plan submitted by the Miss. Legislature as it affects Prentiss County, Miss. and movants are hereby granted leave of Court to file their proposed complaint in intervention attached to their motion for this limited purpose, filed and entered OB 1977, page 2621. (Copies handed US Atty. and Frank Parker and mailed other attys. of record.)
12- 2-77	Pltf's. motion for Temporary Restraining Order, with cert. of service and notice of motion on 12-6-77, at 10:00 A.M., in Gulfport, before Judge Russell, filed. (Copy mailed Gwen for Judge Russell.)

DATE	PROCEEDINGS
12- 2-77	Pltfs. submission of precinct data, with cert. of service and precinct statistics attached, filed. (Copy mailed Gwen for Judge Russell.)
12- 5-77	Copies of the above two pleadings handed Glenda for Judge Cox and mailed Judge Coleman and Mr. Neal.
12-07-77	SUPPLEMENTARY MEMORANDUM OF THE UNITED STATES in response to the Court's. 11-11-77 Order, with attachments A-F and cert. of service, filed. (Copies mailed Judges Russell & Coleman and placed in Glenda's box for Judge Cox. Copy mailed Mr. Neal.)
12-06-77	DEPUTY CLERK SHEET: Hearing in Gulfport on 12-06-77 before Judge Russell for 1 hr. and 15 min. on motion for TRO. ACTION TAKEN: Granted, to remain in effect until Three-Judge Panel can hear motion for preliminary injunction—order to be submitted, filed.
12-06-77	EXHIBITS TO MOTION FOR TRO: P-1 thru P-7, filed.
12- 9-77	Reporter's Transcript of Proceedings held in Jackson on 11-21 & 22-77, before Judges Coleman, Russell and Cox (Volumes I and II), filed. (Copies mailed Judges Coleman and Russell—Judge Cox stated that he did not want a copy, per David Scott.)
12-12-77	TEMOORARY (SIC) RESTRAINING ORDER: Finch, et al restrained until determination by Three Judge Court from issuing any writ of election or authorizing special election to fill vacancy in House of Representatives created by resignation of George W. Rogers, Jr. in Warren and Claiborne Counties, filed and entered OB 1977, pages 2704-2705. (Copies mailed attys. of record and Judges Coleman & Russell and placed in Glenda's box for Judge Cox.)

DATE	PROCEEDINGS
12-20-77	ORDER: Clerk of this Court issue his check in the amount of \$500.00 payable to the Lawyers' Committee for Civil Rights Under Law, being refund of the amount of the cash bonds for costs on appeal, filed and entered OB 1977, page 2783.
1-27-78	Deposition of Travis Cox taken by Stipulation on 12-19-77, filed.
1-31-78	Deposition of Thomas H. Campbell taken by pltf. on Dec. 12 & 13, 1977, filed.
1-31-78	Exhibits 1 thru 16 to deposition of Tommy Campbell, filed.
1-31-78	Exhibits 17 thru 29 to deposition of Tommy Campbell, filed.
2- 7-78	Deposition of Thomas Hofeller, signed by Mr. Hofeller, taken by defts. on 1-10-78, with deponent's corrections sheet marked as Court Reporter's Exhibit #1 and attached to back, filed.
2- 7-78	Exhibits 1 thru 10 to deposition of Thomas Hofeller (Separate Volume), filed.
2- 7-78	Deposition of Lucy Carpenter taken by pltfs. on 12-19-77 (per Court Reporter's letter attached to back), with Exhibits one, two & three attached, filed.
2- 7-78	Deposition of T. E. Jack Wiggins taken by pltfs. on 12-19-77, with Exhibits one thru seven attached, filed.
2- 7-78	Deposition of Calvin A. Webb taken by defts. on 1-9-78, with deponent's corrections sheet marked as Court Reporter's Exhibit #1 attached, filed.
2- 7-78	One Volume Exhibits to the deposition of Calvin A. Webb, filed.

DATE	PROCEEDINGS
2- 8-78	Submission by the United States of a substitute precinct plan, with cert. of service and Attachments A thru F, filed. (Copies mailed Judge Coleman and placed in Gwen and Glenda's boxes for Judges Russell and Cox.)
2- 9-78	Notice of hearing mailed attys. of record, three judges and handed all three Courtroom deputies for Feb. 14, 1978.
2-10-78	Deposition of Earl F. Fortenberry taken by defts. on Jan. 4 & 5, 1978, filed.
2-10-78	Exhibits to deposition of Earl Fortenberry No. 37 thru 48 and Nos. 58-59, filed.
2-10-78	Deposition of Dr. Delmer D. Dunn taken by defts. on 1-6-78, filed.
2-13-78	Deposition of Dr. Richard Morrill taken by pltfs. on 1-13-78, filed.
2-13-78	Notice of pltf. of filing of certified copies of Resolution of the Board of Supervisors of Franklin County, Miss., the Resolution of the Mayor and Board of Aldermen of Meadville, Miss. and the Resolution of the Mayor and Board of Alderman of Bude, Miss., original and three copies, with cert. of service, filed. (Copies handed Glenda for all three judges.)
2-14-78	Pltfs'. REVISED PRECINCT PLAN for the Mississippi Senate and House of Representatives, filed in Court Room and copies handed three Judges.
2-15-78	EXHIBITS: P-13 through P-21; G-1 through G-8; D-3 through D-15, filed. * P-16 (A) (B) (C)—Depositions of Travis Cox, T. E. Wiggins and Lucy Carpenter. D-4, D-5, D-6, D-7, D-8 & D-8(a)—Depositions of Thomas Campbell, Dr. Delmer D. Dunn, Earl F. Fortenberry, Calvin A. Webb and Dr. Richard Morrill and Thomas Hofeller, filed with Exhibits.

DATE	PROCEEDINGS
2-21-78	Copy of letter from Mr. William D. Neal, Special Master, to Frank R. Parker with reference to mathematical errors in Pltf's. Revised Precinct Plan for the Miss. Senate and House of Representatives shown after analysis made, and recapitulation, or summary, of errors set out, with attachments, filed. (Orig. letter with attach. mailed Frank Parker, copies handed Judges Russell and Cox, mailed Judge Coleman, Gerald W. Jones, Civil Rights Div., Dept. of Justice and two copies mailed Atty. Gen. A. F. Summer, at direction of Mr. Neal).
2-28-78	Exhibits filed on 11-10-77, 11-22-77, 12-6-77 and 2-15-78 placed in Fourth Floor Courtroom in ante-room by stairwell.
3- 7-78	Index of pleadings and submissions of defendants and the Special Joint Legislative Committee on Reapportionment compiled as follows: 1. Submission of Plans and Accompanying Data for the Apportionment of the Legislature of the State of Mississippi; 2. Memorandum of Legislature's Methodology; 3. Defendants' Submissions of the Summaries of the Trial Depositions of (A) Chairman Thomas Campbell, (B) Earl Fortenberry, (C) Dr. Delmer Dunn, (D) Thomas Hofeller, (E) Calvin Webb, and (F) Richard Morrill; 4. Defendants' Data Analysis of the Plaintiffs' and Plaintiff-Intervenor's Precinct Plans; 5. Submission of Election Returns in Seven Specified Elections; and 6. Defendants' Submission of Affidavit of Dr. Richard Morrill, each pleading having cert. of service and attachments, filed. (Copy mailed Judge Coleman and handed Gwen and Glenda for Judges Russell & Cox.)
3-15-78	Letter from A. F. Summer dated 3-15-78 to Clerk of Court with attached Certified House Concurrent Resolution No. 116, Laws of Mississippi of 1978,

DATE	PROCEEDINGS
	with request to substitute in pleading filed on 3-7-78 in lieu of Resolution filed with Index of pleadings, etc. on that date. (Certified copy of House Concurrent Resolution No. 116, Laws of Mississippi of 1978 substituted per request. (Per Mr. Thomas Karol two maps placed on Board in file.) (Copies of Letter and copy of Resolution mailed to Judge Russell and Judge Coleman and placed in Glenda's box for Judge Cox.)
3-22-78	Pltfs'. second revised proposed Court-ordered precinct plan for The Mississippi Legislature, with cert. of service, filed. (Copies mailed Mr. Neal, Judges Coleman and Russell and placed in Judge Cox's box.)
3-28-78	Pltf's. motion to strike improper pleadings and papers, with cert. of service and notice of motion at discretion of the Court, filed. (Copies mailed Judges Coleman and Russell and placed in Glenda's box for Judge Cox.)
4-10-78	Response of the United States to pltfs'. motion to strike, with cert. of service, filed. (Copies mailed Judges Russell & Coleman and placed in Glenda's box for Judge Cox.)
4-10-78	Deft's. objection to pltfs'. motion to strike improper pleadings and papers, with cert. of service, filed. (Copy mailed to Judge Coleman and placed in Gwen & Glenda's boxes for Judges Russell and Cox.)
4-20-78	Court Reporter's Transcript of Proceedings held in Jackson, on 2-14-78, before Judges J. P. Coleman, Dan M. Russell, and Harold Cox, (1 Vol.), filed.
4-24-78	Defts. response to pltfs'. second revised proposed Court-ordered precinct plan, with cert. of service, filed. (Copy handed Glenda for Judge Cox and mailed to Judge Coleman, Judge Russell and Mr. Neal.)

DATE	PROCEEDINGS
5- 3-78	PLAN for the reapportionment of The Mississippi State Senate prepared by Special Master Under Direction of the Court, filed. (Copies mailed attys. of record, mailed Judge Coleman and handed Gwen for Judge Russell and handed Glenda for Judge Cox.)
5- 9-78	Special Master's suggested alternate for certain districts in his PLAN for reapportionment of Mississippi state senate, filed. (Copy handed Mr. Neal, handed Gwen for Judge Russell, Put in Gwen's box for Judge Cox, mailed Judge Coleman and all attys. of record.)
5-11-78	Special Master's submission of Revised Plans for the Redistricting of State Senate and House of Representatives Districts affecting Forrest County; and an alternate Plan for House of Representatives Districts affecting Warren County, filed. (Copies mailed attys. of record and Judge Coleman, handed Mr. Neal, and Gwen for Judge Russell, placed in Gwen's Box for Judge Cox.)
5-15-78	ORDER: Special Master shall file a final proposal incorporating his plan in final form to include amendments; Within 15 days after Special Master shall have complied with this Order, all parties shall file written objections to said plan. The Mississippi Legislature not being in session, the appropriate committee is invited to file objections if it has any, filed and entered OB 1978, pages 1209-1210. (Copies mailed all attys. of record, Mr. Neal and Judge Coleman. Copies placed in Gwen's and Glenda's boxes for Judge Russell and Cox.)
5-18-78	Final Plan for the reapportionment of the Mississippi Legislature prepared by Special Master per Court Order of 5-15-78, filed. (Copy handed Mr. Neal and copies mailed to all attys. of record and Judge Coleman and handed to Gwen for Judge Russell and to Glenda for Judge Cox.)

DATE	PROCEEDINGS
5-19-78	Comments by the United States on the plans filed by the Special Master, with Attachments I and II and cert. of service, filed. (Copy handed Gwen for Judge Russell, Glenda for Judge Cox and mailed Judge Coleman.)
6- 7-78	Pltfs'. Objections to Special Master's Proposed Court-Ordered Plan for Reapportionment of the Mississippi Legislature, with cert. of service and Exhibits A and B, with Map attached, filed. (Copy handed Gwen for Judge Russell, Glenda for Judge Cox and mailed Judge Coleman—Mr. Parker mailed copy to Mr. Neal per cert. of service.)
6- 2-78	Objection of defts. and Special Joint Legislative Committee on Reapportionment to Special Master's Final Plan of Reapportionment, with cert. of service and with Appendix A and B attached, filed. (Copies mailed Judge Coleman and Mr. Neal and placed in Gwen's box for Judge Russell and Glenda's box for Judge Cox.)
6- 5-78	Comments by the United States on the Special Master's Final Plan, with Attachments I, II, & III and cert. of service, filed. (Copies mailed Judge Coleman and Mr. Neal and placed in Gwen's box for Judge Russell and Glenda's box for Judge Cox.)
6- 7-78	Errata to defts'. and the Spec. Joint Legislative Comm. on Reapportionment's objections to Special Master's Reapportionment Plan, with cert. of service, filed. (Copies mailed Judge Coleman and Mr. Neal and placed in Owen's box for Judge Russell and Glenda's box for Judge Cox.)
6-12-78	ORDER: Parties requested to meet in a settlement conference within 15 days of entry of this order, in which they are requested to explore every reasonable possibility for entry of consent decree, terminating this litigation except for such items as fixing

DATE	PROCEEDINGS
	appropriate attorneys' fees, compensation for Special Master, and the like. Court requests atty. for pltfs. to coordinate time and place for such meeting among various counsel and also designates atty. for pltfs. to report to the Court, in writing, whether an agreement has been reached, filed and entered OB 1978, pages 1415-1417. (Copies handed Frank Parker, U.S. Atty., Giles Bryant and Mr. Neal; copies placed in Gwen's box for Judge Russell and in Glenda's box for Judge Cox and mailed Judge Coleman and other attys. of record.)
6-30-78	Submission of Data by Special Master to Parties involved in settlement conference, filed. (orig. and 8 copies)
6-30-78	Answer of Special Master to objections made to and comments upon his "Final" Plan of Reapportionment of the Miss. Legislature and his Suggestions and Recommendations thereon, filed. (Orig. and 8 copies)
6-30-78	Copy of Submission of Data and Answer of Special Master mailed attorneys. Judges were submitted copies by Mr. Neal.
7-12-78	Court Reporter's Notes on hearings 6-15-76, 11-21, 22-77, & 2-14-78, filed in Jackson Division, in the office of David Scott.
8- 2-78	Defts'. motion to withhold announcement of Judgment pending Resolution of Proceedings under Section 5 of the Voting Rights Act of 1965, with cert. of service and notice of motion on 8-14-78, at 10:00 A.M., in Jackson, before The Three-Judge Court, with cert. of service; Affidavit of William A. Allain; List of Appendices 1 thru 10, incl. and Affidavit of Jerris Leonard, Esquire, filed. (Copies mailed Judges Coleman and Russell, placed in Glenda's box for Judge Cox and mailed Mr. Neal.)

DATE	PROCEEDINGS
8- 3-78	Letter from Giles W. Bryant, Spec. Asst. Attorney General to Clerk of Court, dated 8-3-78, with letter attached, which should have been attached to affidavit of Jerris Leonard, which was attached to Motion to Withhold Announcement of Judgment filed 8-2-78, in support of said motion, this copy of letter being inadvertently separated during xeroxing process, filed. (Copy of said letter attached to Affidavit of Jerris Leonard as requested.) (Copies mailed Judges Coleman and Russell, placed in Glenda's box for Judge Cox and mailed Mr. Neal.)
8- 4-78	Copy of letter from Frank Parker to Three Judge Court as follow-up to his letter of 7-27-78, reporting to Court re: settlement discussions, with Exhibits A, B & C attached, filed.
8-21-78	USA, pltf.-Intervenor's response in opposition to defts'. motion to withhold announcement of Judgment, with cert. of service, filed. (Copies mailed Judge Coleman, Gwen for Judge Russell and Mr. Neal and placed in Glenda's box for Judge Cox.)
9-22-78	Motion of Davis Hall Smith, atty. of record for the City of Jackson, Miss. to withdraw as attorney of record, with cert. of service and notice of motion on 10-5-78, at 9:00 A.M., in Jackson, before Mag. Countiss (per letter), filed.
10- 5-78	ORDER allowing Davis Hall Smith to withdraw as counsel of record for The City of Jackson, Mississippi, and is effective this date, filed and entered OB 1978, page 2658. (Copy handed Mr. Smith and mailed other attys. of record).
10-12-78	Pltfs'. Motion for Entry of Judgment, with notice of motion at time, place and date to be determined by the Court and cert. of service, with proposed final judgment attached thereto, filed. (Mr. Parker stated that he was handing Judges Russell and Cox copies and mailing Judge Coleman).

DATE	PROCEEDINGS
11- 6-78	Letter from Hon. J. P. Coleman, U.S. Circuit Judge, to Clerk of Court, dated 11-3-78, directing Clerk to notify all counsel in this case that after the elections next Tuesday they are requested to promptly inform the Court of the number and location of legislative vacancies in the State in order that they may then proceed to act on the motion for entry of judgment, filed.
11- 6-78	All counsel of record notified by mailing Notice, with copy of letter from Hon. J. P. Coleman attached, requesting that after the elections next Tuesday to promptly inform the Court of the number and location of legislative vacancies in the State in order that the Court may then proceed to act on the motion for entry of judgment, a copy of which is placed in back of file. (Copies also mailed Mr. Neal and Judges Coleman and Russell and placed in Glenda's box for Judge Cox.)
11- 9-78	Submission of statements for services and expenses of William D. Neal, Special Master, with statements attached, filed.
11-13-78	Pltfs'. Motion for special election relief, with Exhibit A attached and cert. of service, with notice of motion at a time and place at the discretion of the Court, filed.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830 (A)

[Filed Dec. 12, 1977]

PEGGY J. CONNOR, *et al.*,
Plaintiffs,
and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

—VS—

CLIFF FINCH, *et al.*,
Defendants.

TEMPORARY RESTRAINING ORDER

Plaintiffs having filed a motion for temporary restraining order to restrain and enjoin the holding of a special election in House District 30 described by this Court's temporary 1975 plan, and the parties having been given notice of the hearing on the motion, and the Court having held a hearing on the motion on December 6, 1977 at which counsel for the plaintiffs and defendants appeared and presented arguments on the motion, and the Court having considered the arguments of counsel and the evidence presented, and being fully advised in the premises, finding that a special election in House District 30 of

the temporary 1975 plan would result in immediate and irreparable damage and injury could result because: (1) this Court has under consideration proposed court-ordered plans for the reapportionment of the Mississippi Legislature; (2) this Court has set a schedule of discovery for the plaintiffs, the plaintiff-intervenor and the defendants which runs through January 16, 1978 and has further set this matter down for further evidentiary hearings on February 14, 1978; (3) this Court has indicated that it will make a decision in this matter, promptly, after the scheduled hearings are completed; (4) this Court may well adopt a plan of apportionment for the Legislature which would substantially alter the geographic boundaries of House District 30, and therefore any special election in House District 30 (temporary 1975 plan) would be a useless and expensive undertaking which would result in substantial cost to the candidates who would be participating and to the counties which would be holding the election; and therefore the Court having determined that plaintiffs' motion should be granted, it is therefore

ORDERED that the defendant Governor Cliff Finch, his officers, agents, employees, attorneys, and all persons in active concert and participation with him are hereby restrained and enjoined until the hearing and determination by the Three-Judge District Court of plaintiffs' motion for preliminary injunction and pending further order of the Court from issuing any writ of election for or otherwise authorizing a special election to fill the vacancy in the Mississippi House of Representatives created by the resignation of Representative Goerge W. Rogers, Jr., in Warren and Claiborne Counties.

ORDERED on this the 6th day of December, 1977, at 11:30 o'clock, A.M.

FOR THE COURT:

/s/ Dan M. Russell, Jr.
 United States District Judge

Approved as to form:

/s/ Frank R. Parker
 Attorney for Plaintiffs

/s/ Giles W. Bryant
 Attorney for Defendants

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE

Washington, D.C. 20530

[SEAL]

July 31, 1978

Honorable A. F. Summer
Attorney General of the
State of Mississippi
Department of Justice
Jackson, Mississippi 39205

Dear Mr. Attorney General:

This is in reference to the reapportionment of the Mississippi Senate and House of Representatives, S.B. 3098 and H.B. 1491, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on June 1, 1978.

This is also in further reference to your letter of July 26, 1978, to the Attorney General concerning this submission and our response thereto of July 28, 1978.

In your July 26 letter you requested that the time for the Attorney General to respond to your submission be extended 10 days, until August 10, 1978, to allow you an opportunity to confer with the Attorney General and present supplemental information in support of your submission. On July 28, 1978, we responded by explaining that while we have no authority under our procedural guidelines to waive the 60-day period we would normally have upon the presentation of additional information, we were aware of the time factors involved

and would make every effort to make a final decision within ten days of our receipt of that information. According to your conversation of July 31, 1978, you did not consider this response acceptable. We therefore find it necessary to respond today to your submission since this is the 60th day.

We should note at the outset that the burden of proof under Section 5 is on the submitting authority. See *South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *United States v. Georgia*, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Thus if the Attorney General is not satisfied both that the purpose of the submitted redistricting plans and their effect is not racially discriminatory an objection under Section 5 is required.

Our analysis of the submitted plans, in addition, must be made in the context of the history of racial discrimination in the State of Mississippi and of the present status of blacks in the State of Mississippi. Blacks in Mississippi have been the victims of decades of discrimination in the political process and in other areas; the effect of that discrimination, and in some instances the discrimination itself, continues. Substantial evidence exists that whites rarely vote for black candidates or candidates positively supported by blacks and that the vote of blacks is rarely decisive in an electoral contest between white candidates. In addition, available evidence indicates that the Mississippi legislature has not been responsive to the needs of blacks.

With respect to the analysis of the submitted plans, statistical data show that because the State's black population is generally younger than its white population a black majority in a legislative district does not imply a black majority in voting age population in such a district. Furthermore, because of the effects of discrimination and because of the low socio-economic status of blacks in Mississippi compared to whites (itself in part the result of discrimination), the registration and voting

rates among blacks are lower than such rates among whites. Finally, demographic changes since the 1970 census render less reliable any conclusion that a particular district has in fact the black population percentage that the available statistics suggest. As a result, caution must be used in the analysis under Section 5 of the submitted plans. The political influence of blacks in a district cannot be predicted from population statistics alone.

Against this background, we have been unable to conclude that the submitted plans for the Mississippi Senate and House of Representatives do not have the purpose or effect of abridging the right to vote because of race or color. A number of factors have led us to this conclusion.

First, the information presented to us concerning the criteria that were established for the plans and the methodology followed does not indicate the presence of any safeguards to prevent discrimination in the preparation of the plans.

Second, we have received no information explaining why these particular plans were adopted rather than other available plans that appear to provide a greater opportunity for black representation.

Third, we have received un rebutted information indicating that one purpose of the adopted plans was to preserve the seats of incumbent legislators. In this regard we note that none of the State's 55 senators and only 4 of the 122 representatives are blacks.

Fourth, the information available to us indicates that blacks and their representatives had at best a limited opportunity to influence the formulation of the submitted plans.

Fifth, we have received no evidence indicating support among blacks for the submitted plans.

Sixth, the configuration of Senate and House districts in a number of areas suggests a purpose to minimize black influence. This is suggested, for example, by the treatment of Holmes and Humphreys Counties, the City of Greenville, Hinds County, and Copiah County in the Senate plan and by the treatment of Marshall County, the counties in Districts 9, 10, and 11, the Cities of Greenville, Greenwood, and Vicksburg, Hinds County, and Adams County in the House plan.

Accordingly, on the basis of the information we have I must, on behalf of the Attorney General, interpose an objection to the implementation of the reapportionment of the Mississippi State Senate and House of Representatives, set forth in S.B. 3098 and H.B. 1491.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District Court obtained, the effect of the objection by the Attorney General is to make the redistricting plans legally unenforceable.

Sincerely,

/s/ Drew S. Days III

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division